IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2007

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A. No.215 of 2001

M/s.National Insurance Co. Ltd.,
Gobichettypalayam. ...Appellant

vs.

1. K.N.Gurunathan

2. K.M.Palanisamy ...Respondent

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the award and decree, dated 11.07.2000 made in M.C.O.P.No.406 of 1996 on the file of the Motor Accidents Claims Tribunal, (Subordinate Judge), Bhavani.

For Appellant :Mr.K.S.Narasimhan
For 1st Respondent : Mr.T.Murugamanickam

J U D G M E N T

Aggrieved by the award dated 11.07.2000 made in

M.C.O.P.No.406 of 1996 on the file of the Motor Accidents

Claims Tribunal, (Subordinate Judge), Bhavani, the Insurance

Company preferred this appeal.

2. In an accident, which occurred on 25.04.1994, the

first respondent/claimant sustained fracture in his leg. He

claimed compensation of Rs.1,50,000/-. The Tribunal, on evaluation of pleadings and evidence, found that the second respondent was responsible for the accident and awarded compensation of Rs.72,724/- with interest at the rate of 12% per annum from the date of claim till the date of realisation.

3. Heard Mr.K.S.Narasimhan, learned counsel appearing for the appellant, and Mr.T.Murugamanickam, learned counsel for the first respondent.

4. Learned counsel for the appellant submitted that the Tribunal has failed to consider that even in the claim petition, the vehicle was described as "Articulated vehicle" - Tractor and Trailer and it is evident from Ex.P5, Motor Vehicles Inspection Report, that the vehicle was a Heavy Motor Vehicle. Considering the above evidence, the Tribunal ought to have arrived at a conclusion that the driver had no valid licence to drive Heavy Motor Vehicle and exonerated the appellant-Insurance Company from their liability. He further submitted that the Tribunal ought to have considered the decision of the Court in United India Insurance Co. Ltd., v. Gian Chand and others [1997 ACJ 1065].

5. Before the Tribunal, the Assistant Administrative officer of the Insurance Company was examined as RW.1 and he

deposed that the offending vehicle insured with the insurance company was a Heavy Motor Vehicle. Ex.B1 - Policy and Ex.B2 - Investigation report were marked on behalf of the appellant-Insurance Company. It is evident from Ex.B2, Investigation Report that the driver of the offending vehicle was issued with Class "C" driving licence to drive a Tractor.

6. The respondent/claimant deposed that on 25.04.1994, when he was standing on the left side of the road, the second respondent's tractor hit him and he sustained grievous injuries. A compliant was lodged against the driver of the tractor. Ex.P1 is the First Information Report, dated 25.04.1994. It is evident from Ex.P3, Judgment copy of the criminal Court that the driver of the tractor also admitted his guilt and paid the fine. It is admitted by the Insurance Company that the offending vehicle was only Tractor and that the driver had a valid licence to drive Tractor. The manner of accident and the nature of injures were not disputed.

7. In a decision in United India Insurance Co. Ltd., v. Gian Chand, reported in 1997 ACJ 1083, the insured had handed over the vehicle for being driver by an unlicensed driver, the Apex Court held that the Insurance Company would get exonerated from its liability to meet the claims of

third party on account of vehicular accident accused by such unlicensed driver.

8. The Supreme Court in Natwar Parikh Co. Ltd., v. Stateof karnataka and others repoted in 2006 ACJ 1, has held that when the Tractor and Trailor combined would constitute "a goods carriage" and necessitate a permit for its use on road. The Apex Court further held that the State is empowered to levy tax on all the vehicles which are designed and manufactured for use on the road. The case on hand relates to claim for compensation and therefore, the said decision is not applicable to the facts of the case.

9. In National Insurance Co. Ltd., v. Swaran Singh, reported in 2004 ACJ 1, the Supreme Court has held in paragraph 102 (iii) is as follows:

"The breach of policy conditions, e.g., disqualification of driver or invalid driving licence of the driver, as contained in Sub-Section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

The same ratio has been followed in a subsequent decision of the Supreme Court in Lal Chand v. Oriental Insurance Co. Ltd., reported in 2006 ACJ 2161, wherein, the Apex Court allowed the appeal by the insured absolved him from his liability.

10. The decision reported in 1997 ACJ 1083 (supra) is not applicable to the facts of the case, inasmuch as RW.1 himself had admitted that the driver had the valid licence. Even otherwise, as per the decisions of the Apex Court in 2004 ACJ 1 (supra) and 2006 ACJ 2161 (supra), the insurer is not absolved of their liability, as there is no evidence to prove that the insurance company had taken any steps to fulfil the conditions in Sub Para (iii) of Para 102 of the judgment. In view of the above, I do not find any error in the judgment of the Tribunal and the same is confirmed. The quantum of compensation is not challenged in this appeal and therefore, it is sustained.

11. This Court by order dated 03.07.2002, has permitted the respondent/claimant to withdraw 50% of the amount deposited to the credit of M.C.O.P.No.406 of 1996 on the file of the Motor Accidents Claims Tribunal, (Sub Judge), Bhavani, without furnishing any security and the balance 50% has been re-invested in the Fixed Deposit in the Indian Bank at Bhavani for three years and renewed

thereafter. The respondent/claimant is permitted to

withdraw the said amount after making necessary application

before the Tribunal.

10. In the result, the Civil Miscellaneous Appeal

is dismissed. No costs.

skm

To

The Motor Accidents Claims Tribunal,
(Subordinate Judge),
Bhavani.